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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re } Case No. 08-10115-B-7  
MARTHA BARIGIAN, } Chapter 7  
Debtor } Adversary Proc. No. 10-01003  
\_\_\_\_\_  
JAMES E. SALVEN, CHAPTER }  
7 TRUSTEE, } FINDINGS OF FACT AND  
Plaintiff, } CONCLUSIONS OF LAW  
v. }  
WARREN BARIGIAN, }  
Defendants. }

**INTRODUCTION**

Martha Barigian, Debtor in the above-captioned case, filed a Voluntary Petition for Relief under Chapter 7 of the United States Bankruptcy Code on January 7, 2008.

On January 5, 2010, Plaintiff James E. Salven, Chapter 7 Trustee in this bankruptcy case, timely filed a Complaint alleging claims for fraudulent transfer, turnover, and preferential payments under 11 U.S.C. §§548(a)(1)(A) and (B), 547, 550, and 542. In addition, the Complaint alleged fraudulent transfer and constructive trust claims under California Civil Code §§ 3439.04-05, and 2223. Finally, the Complaint requests declaratory relief. The Plaintiff essentially claims to hold, for the estate, an interest in community property he alleges that the Debtor in this case conveyed to her estranged husband without receiving any value. On February 10, 2010, Defendant

1 Warren Barigian filed his answer to the Plaintiff's complaint.

2 The trial was held on November 5, 2012. Plaintiff James E. Salven was  
 3 represented by Klein, Denatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, by Connie  
 4 Parker, Esq. Defendant Warren Barigian was represented by Wild, Carter & Tipton, by  
 5 Steven E. Paganetti, Esq. At the close of evidence at trial the court requested submission  
 6 of proposed findings of fact and conclusions of law. In addition, the court requested that  
 7 Plaintiff's counsel attempt to obtain records from the Debtor's 1994 bankruptcy case  
 8 pertaining to her characterization in those documents of the ownership of the real  
 9 property at issue in this adversary proceeding . Thereafter, the court took the matter  
 10 under submission. As explained in the following findings of fact and conclusions of law,  
 11 the court finds in favor of the Defendant in that the court is not persuaded that the  
 12 Plaintiff has met his burden of proof to show that the Debtor ever possessed an interest in  
 13 the subject real property.

14 **JURISDICTION**

15 Jurisdiction exists under 28 U.S.C. §1334. Venue is proper under 28 U.S.C.  
 16 §1409(a). The District Court for the Eastern District of California has generally referred  
 17 these matters to the Bankruptcy Court for hearing pursuant to 28 U.S.C. §157(a) and the  
 18 United States District Court, Eastern District of California General Orders 182 and 223.  
 19 This is a core proceeding within the meaning of U.S.C. §127(b)(2)(A), (E), (f), (H) and  
 20 (O). This is a complaint under 11 U.S.C. §§542, 544, 547, 548, 550, and 551, and  
 21 California Civil Code §3439, et seq. An action by a trustee under 11 U.S.C. §544(b)  
 22 under state fraudulent conveyance law is a core proceeding. Plaintiff James E. Salven is  
 23 the chapter 7 trustee in the bankruptcy case and has standing to bring this adversary  
 24 proceeding.

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1                   **FINDINGS OF FACT**

2                   **Background:**<sup>1</sup>

3                   The Defendant, Warren Barigian (the “Defendant”) is the estranged husband of  
 4 the debtor, Martha Barigian (the “Debtor”). The couple was married in March 1985 and  
 5 lived together in California at the real property at 4048 Hayvenhurst Avenue, Encino,  
 6 California, the subject of this adversary proceeding (the “Hayvenhurst Property”) until  
 7 1994 or 1995. When they married the Defendant held full title to The Hayvenhurst  
 8 Property. There was more than one residence on the property and others, including Henry  
 9 Barigian, the Defendant’s brother (“Henry”), and the Defendant’s mother also resided at  
 10 the Hayvenhurst Property at times. (Trial Tr. 11:23-25, Nov. 5, 2012.) The Hayvenhurst  
 11 Property was purchased by the Defendant and Henry in 1972 as tenants in common and  
 12 Henry lived on the property from 1972-1995. In 1975 Henry conveyed his interest to the  
 13 Defendant. Payments on the \$73,600 purchase money loan were made from the  
 14 Defendant’s bank account.<sup>2</sup>

15                  The Debtor actively invested in the real estate market and formed and managed  
 16 numerous corporations and partnerships. (Trial Tr. 22:14; 22:22-23:3.) She filed  
 17 bankruptcy twice during that time: in 1985 shortly after her marriage, and again in 1994.  
 18 Although in the 1994 case, as in this bankruptcy case, several creditors filed complaints  
 19 objecting to her discharge, she prevailed in each and obtained a discharge of her debts in  
 20 both cases.

21                  The Defendant was a highly compensated voice coach, however at some point

23  
 24                  <sup>1</sup>In an earlier motion for summary judgment or adjudication, the following findings of  
 25 fact were made: the Debtor did not have any legal title interest in the property; the Defendant  
 obtained a \$400,000 loan in his name only, secured by the Hayvenhurst Property, in 1988.

26                  <sup>2</sup>Testimony conflicted as to whether the account was held jointly by the Defendant and  
 27 Henry (per the Debtor’s testimony), or by the Defendant alone (per Henry’s testimony Trial Tr.  
 131:18-20, and the Defendant’s testimony, Trial Tr. 135:9-12). The determination of that fact is  
 28 not relevant to the conclusion.

1 during the marriage he ceased having any income except social security benefits. None of  
 2 the income and assets of the Defendant and Debtor, other than the Hayvenhurst Property  
 3 and the Defendant's pre-marriage checking account, were alleged to be separate property.  
 4 In January 2008 the Debtor filed this petition in bankruptcy and scheduled an interest on  
 5 schedule B, in the Hayvenhurst Property, which she valued at \$1,000,000.<sup>3</sup>

6 **The Hayvenhurst Note and the First Quit Claim Deed (QCD I):**

7 Three years after the marriage, in 1988, the Defendant obtained a \$725,000  
 8 appraisal of the Hayvenhurst Property and a \$400,000 loan. The Defendant, representing  
 9 himself as an "unmarried man," and in his name only, applied for the loan which was  
 10 secured by the property (the "Hayvenhurst Note," Pl. Trial Ex. 17). The proceeds of the  
 11 Hayvenhurst Note were deposited into the Defendant's bank account. These proceeds  
 12 (the "Hayvenhurst Note Proceeds"), were used to retire a senior loan, to make at least up  
 13 to eight payments on the loan, to improve the Hayvenhurst Property, and were invested in  
 14 other transactions. (Trial Tr. 29:18-31:4; 64:22-64:15.)

15 The Debtor managed the household finances and the community checking  
 16 accounts connected with their various business enterprises; she did not control the  
 17 Defendant's pre-marriage separate checking account.<sup>4</sup> (Trial Tr. 63:24-64:6.) In her  
 18 deposition she testified that she had possession of a check register that itemized the  
 19 deposits to the joint account held by the Defendant and Henry as well as the withdrawals  
 20 and use of the funds withdrawn. However, such a register was not produced at trial and  
 21 the Debtor's trial testimony was, that she had only possessed a few pages from those bank  
 22 books. (Trial Tr. 66:19-67:18; 67:20-69:21.)

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23  
 24       <sup>3</sup>The Debtor also claimed an interest in a settlement of an alleged law suit against the  
 25 realtor involved in the sale of The Hayvenhurst Property, however no credible interest regarding  
 26 the existence or amount of any such suit was introduced at trial.

27       <sup>4</sup>The Debtor did not claim any separate property interest in any of the assets. The  
 28 Defendant did not claim any separate property in any asset except those related to the  
 Hayvenhurst property.

1       The Debtor made at least one payment on the Hayvenhurst Note from one of the  
 2 community accounts. The Plaintiff produced a single check numbered 1218 and dated  
 3 May 16, 1995, in the amount of \$5,261, representing a payment on the Hayvenhurst Note.  
 4 The Debtor testified that she had no knowledge of any payments made by Henry prior to  
 5 the execution of a quit claim deed conveying to Henry a partial interest in the  
 6 Hayvenhurst Property, *infra*. However, Henry produced a copy of a check representing a  
 7 payment on the Hayvenhurst Note that was dated January 11, 1992. He also produced  
 8 copies of checks for a payment on the Hayvenhurst Note and for expenses related to the  
 9 Hayvenhurst Property that were dated after the Debtor and Defendant executed an August  
 10 2001 quit claim deed conveying a portion of the Hayvenhurst Property to Henry (the  
 11 “QCD I, Pl. Trial Ex. 9).<sup>5</sup> Thereafter, Henry made the payments on the Hayvenhurst Note  
 12 as well as paying the property taxes and other maintenance expenses.

13 **The Students Loans:**

14       In 1994, after an automobile accident, the Debtor and Defendant obtained loans  
 15 from two of the Defendant’s students, Bill Bokovoy, for \$25,000, and another, unnamed,  
 16 individual for \$7,500 (the “Students Loans”). Living expenses as well as payments on the  
 17 Hayvenhurst Note were made from these funds. (Trial Tr. 37:17-19; 71:25.) Henry  
 18 produced a copy of a check dated April 22, 2007, in the amount of \$43,340 payable to  
 19 Bill Bokovoy representing repayment of that loan with interest. (Trial Tr. 125:25-  
 20 126:12.)

21 **The Debtor’s Prior Bankruptcy Cases:**

22       The court takes judicial notice of the documents filed with the bankruptcy court in  
 23 the San Fernando Valley Division of the Central District of California in connection with  
 24 the Debtor’s 1994 bankruptcy case 1:94-bk-14622-GM (Exhibit A). This 1994 case was  
 25 the Debtor’s second, the first being filed in 1985 shortly after the Debtor’s and

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27       <sup>5</sup>The QCD I says 1/2, but in testimony the Debtor explained that the actual interest  
 28 conveyed was 1/3 because another parcel was involved.

1 Defendant's marriage. In the 1994 case the Debtor amended her schedules twice. None  
 2 of the versions of schedules A or B indicated any interest in any real property, including  
 3 the Hayvenhurst Property, neither was any personal property interest in the Hayvenhurst  
 4 Property listed. The Debtor's original 1994 schedule J showed expenses of \$450  
 5 rent/mortgage and \$50 for maintenance expenses. Both of the amended schedules J listed  
 6 \$500 as rent or mortgage and \$0 for maintenance expenses.

7 **Improvements to The Hayvenhurst Property:**

8 Improvements were made to the Hayvenhurst Property, however testimony related  
 9 to those improvements was conflicting as to whether they were paid for by the community  
 10 or by Henry, who lived on the property from 1972 until 1995. (Trial Tr. 127:10-11.) No  
 11 reliable or documentary evidence of the improvements, their cost, or how they were  
 12 funded, was introduced, nor whether they were made before or during the Debtor's  
 13 marriage. While the Debtor testified that she paid for improvements (Trial Tr. 1:15-42-  
 14 17), Henry testified that she did not (Trial Tr. 27:12-14), but that he had done so (Trial Tr.  
 15 126:15-127:20).

16 **The Second Quit Claim Deed (QCD II):**

17 In December 2006, in connection with the Debtor's petition for dissolution, the  
 18 Debtor executed a quit claim deed (the "QCD II," Pl. Trial Ex. 12) permitting the sale of  
 19 the Hayvenhurst Property in a tax-free exchange under IRC §1031. Pursuant to the  
 20 order, the Debtor did not waive "any right or interest [she] may have in said Hayvenhurst  
 21 property should a tracing and accounting provide that there is a community interest in said  
 22 Hayvenhurst property." (Pl. Trial Ex. 10, 2:5-7.)

23 **Sale of The Hayvenhurst Property:**

24 In 2007 the Hayvenhurst Property was sold for \$3.7 million dollars (the  
 25 "Hayvenhurst Sale Proceeds"), from which funds the Hayvenhurst Note was satisfied by a  
 26 payment of \$241,811.29, evidencing a total principal reduction in the Hayvenhurst Note  
 27 from the initial loan date to the date of sale in the amount of \$158,188.71. In addition,  
 28 *inter alia*, the following amounts were disbursed:

1	Payoff of Loan: Charrow and Slee Trust Account and interest:	\$ 38,545
2	Commission:	\$ 185,000
3	Title Charges:	\$ 30,004
4	Escrow Fees:	\$ 7,010

5 After the costs of sale and expenses, the Hayvenhurst Sale Proceeds were used by the  
 6 Defendant and Henry to purchase other properties.

7 **State Court Civil Law Suit Settlement:**

8 No reliable evidence was produced to show either the existence or the amount of  
 9 any civil litigation or settlement of this claim referred to in the complaint.

10 **CONCLUSIONS OF LAW**

11 The Plaintiff's complaint lists nine claims for relief, including fraudulent transfer,  
 12 avoidance of a preferential payment, turnover of property of the estate, and constructive  
 13 trust. The Plaintiff's claims depend upon the Debtor having an interest in the  
 14 Hayvenhurst Property at the time she filed her bankruptcy petition or during the  
 15 avoidance period prior to filing. While the Plaintiff's ability to recover such an interest in  
 16 the context of the Debtor's bankruptcy case rests in bankruptcy law, the determination of  
 17 that community interest is defined by California state law.

18 The threshold issue, however, resides in the Plaintiff's claim for declaratory relief.  
 19 In order for the Plaintiff to prevail on any of his claims the court must find that the Debtor  
 20 possessed some interest in the Hayvenhurst Property either at the time she filed her  
 21 petition or, at least, at the time she executed the QCD II. On this, as on each of the other  
 22 claims for relief, the Plaintiff bears the burden of proof. The Plaintiff must prove, by a  
 23 preponderance of the evidence, each of the elements of his claim.

24 In his claim for declaratory relief, the Plaintiff asks the court to find that the estate,  
 25 through the Debtor, holds an interest in the Hayvenhurst Sale Proceeds.<sup>6</sup> The Plaintiff  
 26

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27       <sup>6</sup>While the Plaintiff also claims an interest in the proceeds from the real estate litigation,  
 28 no credible evidence of that litigation or settlement was introduced.

1 contends, first, that the estate holds a one-third ownership interest of the Hayvenhurst  
 2 Property pursuant to transmutation of the property from separate to community.  
 3 Alternatively, the Plaintiff asks the court to find that, while the Hayvenhurst Property was  
 4 the Defendant's separate property, the estate holds a community property interest in the  
 5 Hayvenhurst Sale Proceeds based on principal reduction of the Hayvenhurst Note.  
 6 Because the court cannot find that the Plaintiff has met his burden of proof on these  
 7 issues, the Plaintiff must lose on his remaining claims.

8 **The Hayvenhurst Property is Properly Characterized as the Defendant's Separate  
 9 Property:**

10 In California there are two categories of ownership by married people: the separate  
 11 property of each, and community property of both.<sup>7</sup> The separate property of a married  
 12 person includes all property owned before marriage and the rents, issues, and profits,  
 13 including appreciation of value, of all such property. Cal. Fam. Code § 770(a). The  
 14 property held by one spouse before marriage is presumed to remain separate property.  
 15 The character of property as separate or community is determined by the time and manner  
 16 of its acquisition and is fixed as of the time it is acquired until it is changed in some  
 17 manner recognized by law. *Palen v. Palen*, 28 Cal. App. 2d 602, 83 P.2d 36 (3d Dist.  
 18 1938). It does not change its character as a result of marriage or mere use in marital  
 19 relationship. The expenditure of community funds for the improvement of separate  
 20 property of one of the spouses does not affect the character of that property. The  
 21 improvements have the character of the separate property and belong to its owner.  
 22 *Spreng v. Spreng*, 119 Cal. App. 155, 6 P.2d 104 (3d Dist. 1931) (unless agreed  
 23 differently, the character of separate property is not changed by spending community  
 24 funds for its improvement); *Belmont v. Belmont*, 188 Cal. App. 2d 33, 10 Cal. Rptr. 227  
 25 (4th Dist. 1961).

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27                   <sup>7</sup>The following statements are in the absence to an agreement, in the case of real property,  
 28 written, to the contrary. Case citations omitted.

1 By agreement married persons may transmute separate property into community  
 2 property, and vice versa. Pursuant to Cal. Fam. Code §852, since January 1, 1985, any  
 3 transmutation of real property “is not valid unless made in writing by an express  
 4 declaration approved by the adversely affected spouse.” *In re Marriage of Benson*, 36  
 5 Cal.4th 1096, 1100 (Cal., 2005).<sup>8</sup> The “express declaration” of that code section is  
 6 satisfied “only if it states on its face that a change in the character or ownership of the  
 7 subject property is being made.” *Id.*, internal citations omitted. The use of “extrinsic  
 8 evidence” to show that a writing effected a transmutation is precluded. *Id.*

9 The Debtor and Defendant were married in March 1985, thus, Cal. Fam. Code  
 10 § 852 applies to this case. Because sufficient evidence of transmutation from the  
 11 Defendant’s separate property to community property was not produced, the only interest  
 12 in the Hayvenhurst Property that Debtor could possess is a *pro tanto* community interest  
 13 based on the use of community funds to reduce the principal of the Hayvenhurst Note and  
 14 its proportional appreciation pursuant to a state common law algorithm.

15 The Plaintiff’s allegation, that the Defendant’s separate property interest in the  
 16 Hayvenhurst Property was transmuted to community interest, is without merit. He  
 17 supports his contention with the Debtor’s testimony that the Defendant told her that she  
 18 owned one-half of the property and also by the Debtor’s execution of QCD I. It is  
 19 uncontested that the Defendant entered the marriage holding the Hayvenhurst Property  
 20 as his separate property. In the absence of a written document satisfying the requirements  
 21 of Cal. Fam. Code §852, the court cannot find that the Hayvenhurst Property was thus  
 22 transmuted.

23 **Pro Tanto Community Interest:**

24 The only relevant issues in determining whether or not the estate has an interest in  
 25 the Hayvenhurst Property are: whether or not the community reduced the principal

26  
 27       <sup>8</sup>Cal. Fam. Code §852(a) states: “A transmutation of real or personal property is not valid  
 28 unless made in writing by an express declaration that is made, joined in, consented to, or  
       accepted by the spouse whose interest in the property is adversely affected.”

1 balance of the Hayvenhurst Note; and, if so, by how much; the value of the property at the  
2 time of marriage; and, the value of the property at the time of the divorce or separation.

3       The California common law formula for determining the community interest  
4 portion of separate property where a loan has been paid for with community funds  
5 requires determination of three specific numbers. The first of those is, the total amount of  
6 principal reduction attributable to payments from community funds. The second is, the  
7 value of the property at the time of the marriage; the third is, the value at the time of  
8 divorce or separation – in other words, the amount of appreciation in value during the  
9 relevant time periods.

10 **No Presumption that Appreciation of The Hayvenhurst Property Belonged to the  
11 Community:**

12       The general presumption and burden of proof related to the characterization of  
13 property acquired during marriage as community property does not apply to property  
14 owned separately before marriage. Here, the Plaintiff bears the burden of proving that the  
15 appreciation of the Hayvenhurst Property accrued to the community. *In re Ney's Estate*,  
16 212 Cal.App.2d 891, 895 (Cal.App.,1963) ('issues and profits from separate property and  
17 the increase in value thereof are separate property under Civil Code, § 163, *Huber v.  
18 Huber, supra*, 27 Cal.2d 784, 167 P.2d 708; and as such are not subject to the community  
19 property presumption under Civil Code, § 164.' (*Mears v. Mears*, (1960), 180 Cal.App.2d  
20 484, 506, 4 Cal.Rptr. 618, 632.)).

21       In *Ney*, the husband owned separate property when the couple married. During the  
22 course of the marriage he used his personal efforts to manage and increase the value of  
23 the separate property. The court explained that the husband's personal efforts were  
24 contributions by the community to the value of the property. However, "[t]here is no  
25 apportionment where the increase in value or income is attributable solely to the natural  
26 enhancement of the property. *Id.*, citations omitted. In the case at hand, there was little  
27 or no credible evidence as to if, or how much, the community contributed to the principal  
28 reduction of the Hayvenhurst Note.

1      **The Proceeds from Hayvenhurst Note was not Community Property:**

2            The community property presumption also does not apply to the proceeds of a loan  
3 to one spouse, where the intent of the lender is to rely of that spouse for repayment.  
4 Where the loan is secured by the spouse's separate property, the proceeds of the loan are  
5 conclusively separate property. Cal. Fam. Code § 770(d). Even if the presumption, that  
6 the proceeds of loans obtained during marriage are community property, did apply to the  
7 Hayvenhurst Note, this presumption may be rebutted by evidence that the lender relied  
8 only on that party's assets or income. In this case the Defendant held himself out to be a  
9 single individual. That representation, albeit false, coupled with the fact that the  
10 \$400,000 loan was secured by the Defendant's separate property freshly appraised at  
11 more than double that amount, persuades the court that the lender's intent was to rely on  
12 the Defendant's separate property. The fact that the loan may also have been secured by a  
13 deposit account, or that the Defendant's income was community property, did not affect  
14 the *lender's intent* when the lender believed the borrower to be unmarried. Therefore, the  
15 court is persuaded that the proceeds of the loan, which were not commingled with  
16 community funds, was the Defendant's separate property.

17      **The Proceeds from the Students Loans was Community Property:**

18            The presumption, that the proceeds of loans are community property, does apply to  
19 the Students Loans. In this case, the only evidence as to the existence or amount of these  
20 loans was the contradictory testimony of the Debtor and the Defendant, the testimony of  
21 Henry, and the copy of his cancelled check written to one of those students, Bill Bokovoy.  
22 The court cannot find sufficient evidence as to the existence, amounts, or use of these  
23 loans to conclude that they were used in any specific amount to reduce the principal on  
24 the Hayvenhurst Note.

25      **Expert Testimony by Mr. Heberger:**

26            The role of the Plaintiff's expert witness was to calculate any *pro rata* community  
27 interest in the Hayvenhurst Property. For several reasons the court did not find Mr.  
28 Heberger's testimony to be helpful. He neither requested nor examined any documents

1 showing payments on the Hayvenhurst Note from property of the community. He  
2 purported to calculate the community interest from the time period of 1988 through  
3 September 2001. Trial Tr. 114:25-115:2. His computational conclusions were partially  
4 based on assumptions, some of which contradict facts in evidence. For example, while he  
5 assumed that all of the principal reduction during the relevant time period was attributable  
6 solely to the community, at least some of the payments in reduction of the Hayvenhurst  
7 Note principal were made by a third party as well as from the Defendant's separate  
8 property. Although Mr. Heberger was not qualified as a real estate appraiser, Trial Tr.  
9 113:23-24, he made forensic estimations and assumed a value for the Hayvenhurst  
10 Property at the time of marriage based on its value three years later when it was  
11 appraised. He also estimated and assumed a value at the time of the QCD I:  
12 "I have a known beginning value of \$725,000, and a known concluding value of  
13 \$3,700,000. So, in estimating the amount of value at the date of [the QCD I], since I did  
14 not have a separate appraisal as of that date, I did an extrapolation using two separate  
15 methods to arrive at the approximate appraised value, or fair market value at the date of  
16 the [QCD I]. The two methods I used, one I refer to as an 'internal rate of return  
17 method,' which assumes - - it calculates a rate of appreciation from the date of the loan  
18 through the date of sale, and applies that constant rate of appreciation from the date of  
19 financing up through the date of the [QCD I]. That was method one."

20       “Method two, I just used a straight line. I determined what the average daily  
21 depreciation was from the date of the loan through the date of the sale, and applied that to  
22 -- based on the number of days elapsed from the [date of the financing] through the date  
23 of the [QCD I], and just added that daily appreciation to the original value. So I arrived at  
24 two separate numbers through two methodologies, an interest methodology and a straight  
25 line methodology, and I averaged the results of those two.” Trial Tr. 99:24-100:21.<sup>9</sup>

<sup>9</sup>The court notes that Mr. Heberger's methodologies do not account for the volatility of the real estate market during the few years prior to the sale of the Hayvenhurst property in 2007.

1        As to the calculation of the principal reduction attributable to the community, Mr.  
2 Heberger stated: "Well, I computed the principal reduction based on the change in loan  
3 balances between the original loan and the balance of the loan at the close of escrow.  
4 And I utilized an Excel spread sheet function that calculates cumulative principal  
5 reduction between stated dates to arrive at the [amount of principal reduction at the time  
6 of the QCD II]." Trial Tr. 105:23-106:3. In response to questions of how evidence that  
7 the principal had been reduced by payments from third parties, Mr. Heberger plugged in  
8 alternative numbers and suggested alternate values for the community interest, however  
9 there was no offer of proof that any particular amount was correct.

10                  **DISCUSSION**

11        The evidence presented at trial was underwhelming. While the Plaintiff's primary  
12 witness, the Debtor, appeared to be a very savvy business woman with experience  
13 forming and operating multiple business entities simultaneously, documentary evidence  
14 was sparse to none in key areas in dispute. A copy of a single check was presented as  
15 representing a payment from community funds on the Hayvenhurst Note. The Debtor  
16 testified during her deposition that she possessed bank account registers for the account  
17 allegedly held by the Defendant and Henry that showed how the proceeds of the  
18 Hayvenhurst Note were used. This evidence was never produced during discovery,  
19 however, and the Debtor contradicted her earlier testimony, claiming to have only  
20 possessed a few pages from the bank registers.

21        The Debtor's testimony, that she made the payments on the Hayvenhurst Note  
22 because the Defendant told her that she owned one-half of the property, is not persuasive  
23 evidence either that she believes that she holds such an interest or that she made the  
24 payments at issue. The Plaintiff argues that since the couple was in a fiduciary  
25 relationship the court should enforce that representation. The court notes that at the same  
26 time the Debtor claims to have believed she held an ownership interest in the  
27 Hayvenhurst Property, she executed bankruptcy documents under penalty of perjury that  
28 she had no interest in any real property. She also did not list any personal property

1 interest related to the Hayvenhurst Property. In addition, in contrast to the thousands of  
 2 dollars each month she claims she was spending on payments on the Hayvenhurst Note,  
 3 Trial Tr. 32:15, she listed rent or mortgage expenses of \$500 on her 1994 amended  
 4 schedule J.<sup>10</sup> Moreover, the specific requirements of Cal. Fam. Code §852 dictate the  
 5 evidence required for transmutation of separate property to community  
 6 status—requirements which here have not been met.

7 The Debtor's testimony as to the funds spent on renovation of the Hayvenhurst  
 8 Property were inconsistent with the testimony of Henry. While specific, the Debtor's  
 9 testimony was impeached by prior testimony on more than one occasion. The court is not  
 10 persuaded that community property was used to make improvements to the Hayvenhurst  
 11 Property.<sup>11</sup>

12 The Plaintiff's argument appears to be: the signature of a property owner is  
 13 required to be on a deed to convey ownership; the Debtors signature was on the QCD I;  
 14 therefore, the Debtor was an owner of the property. His conclusion is invalid. By law, a  
 15 quit claim deed can only convey whatever interest held by the signatory. *Littlefield v.*  
 16 *Perry*, 88 U.S. 205, 217 (1874).

17 As to the Plaintiff's allegation that the estate holds an interest in the civil law suit  
 18 proceeds since the Defendant "did not present evidence to rebut that he received at least  
 19 \$1,000,000 in settlement funds," the court notes that the Plaintiff presented no credible  
 20 evidence of any such settlement. There was no documentary evidence of such a suit or  
 21 settlement. The Debtor testified from hearsay, and not personal knowledge of such a suit  
 22 and settlement.

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23  
 24       <sup>10</sup>The court can infer that the amendment of the Debtor's 1994 schedule J to show  
 25 rent/mortgage payments of \$500 per month, and \$0 maintenance costs, to replace payments of  
 26 \$450 and maintenance payments of \$50, was in light of an objection by the trustee to property  
 27 maintenance expenses since the Debtor claimed no real property ownership.

28       <sup>11</sup>The Debtor's testimony as to her multitude of bank accounts and related entities was  
 incomprehensible to the court.

The testimony from the Plaintiff's expert regarding the Moore-Marsden Rule, while informative, did not prove how the rule should be applied in meeting the Plaintiff's burden of proof. Mr. Heberger explained the common law algorithm used in cases such as this, however his conclusions were based on assumptions which were either not supported by, or in direct contradiction to, the evidence presented at trial.

The Plaintiff's claims for fraudulent transfer pursuant to California state and bankruptcy law is made moot by the court's determination that the Debtor had no interest in the Hayvenhurst Property at any relevant time including at the time the QCD II was executed. In addition, the QDC II could not have conveyed anything to the Defendant in that the Debtor retained any interest. However, the fact that the stipulation and order provided for the Debtor's retention of a community interest should a "tracing and accounting" so prove does not show that such an interest exists. The same conclusion applies with regard to the Plaintiff's claim for setting aside a preferential payment, turnover, and imposition of a constructive trust.

## CONCLUSION.

In that the Plaintiff did not meet his burden of proving, by a preponderance of evidence, that the Debtor ever held an interest in the Hayvenhurst Property, the court finds in favor of the Defendant. For that reason also, the Plaintiff's remaining claims for relief are moot.

The Defendant requested attorney's fees in his proposed findings of fact and proposed judgment and in his answer; the Plaintiff requested only costs. However, there is no authority to grant attorney's fees to anyone in this case. Therefore, each party is to bear their own fees and costs.

Date: December 17, 2012.

  
Richard T. Ford, Judge  
United States Bankruptcy Court

In re: Martha Jean Barigian

/ Debtor

Case No.

**SCHEDULE A - REAL PROPERTY**

Description and Location of Property	Nature of Debtor's Interest in Property	H W J C	Market Value of Debtor's Interest	Amount of Secured Claim
NONE			Total \$ 0.00	

Exhibit "A"

Schedule A - page 1 of 1

In re: Martha Jean Barigian

/ Debtor

Case No.

## SCHEDULE B - PERSONAL PROPERTY

Description of Property	Location	H Market Value W of Debtor's J Interest C Before Claim
1. <u>Cash on hand.</u> <u>Misc Cash</u>		\$ 1,000
2. <u>Checking, savings or other financial accounts, certificates of deposits or shares in banks, savings, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.</u> <input checked="" type="checkbox"/> NONE		
3. <u>Security deposits with public utilities, telephone companies, landlords, and others.</u> <input checked="" type="checkbox"/> NONE		
4. <u>Household goods and furnishings, including audio, video, and computer equipment.</u> <u>Misc. Household Goods</u>		\$ 1,500
5. <u>Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.</u> <input checked="" type="checkbox"/> NONE		
6. <u>Wearing apparel.</u> <u>Misc.Clothing</u>		\$ 1,200
7. <u>Furs and jewelry.</u> <u>Misc. Jewelry</u>		\$ 750
8. <u>Firearms and sports, photographic, and other hobby equipment.</u> <input checked="" type="checkbox"/> NONE		
9. <u>Interests in insurance policies.</u> <input checked="" type="checkbox"/> NONE		
10. <u>Annuities.</u> <input checked="" type="checkbox"/> NONE		
11. <u>Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans.</u> <input checked="" type="checkbox"/> NONE		
12. <u>Stock and interests in incorporated and unincorporated businesses.</u> <input checked="" type="checkbox"/> NONE		

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In re: Martha Jean Barigian

/ Debtor

Case No.

**SCHEDULE B - PERSONAL PROPERTY**  
**(Continuation Sheet)**

Description of Property	Location	H Market Value W of Debtor's J Interest C Before Claim
13. <u>Interests in partnerships or joint ventures.</u>	[x] NONE	
14. <u>Government and corporate bonds and other negotiable and non-negotiable instruments.</u>	[x] NONE	
15. <u>Accounts receivable.</u> <i>800 Booths</i>		\$ 40,000
16. <u>Alimony, maintenance, support, and property settlements, to which the debtor is or may be entitled.</u>	[x] NONE	
17. <u>Other liquidated debts owing debtor including tax refunds.</u>	[x] NONE	
18. <u>Equitable and future interests, life estates, and rights of power exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.</u>	[x] NONE	
19. <u>Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.</u>	[x] NONE	
20. <u>Other contingent and unliquidated claims of every nature, including tax refunds, counter claims of the debtor, and the rights to setoff claims.</u>	[x] NONE	
21. <u>Patents, copyrights, and other intellectual property.</u>	[x] NONE	
22. <u>Licenses, franchises, and other general intangibles.</u> <i>Business Lic (cost)</i>		
23. <u>Automobiles, trucks, trailers, and other vehicles and accessories.</u>	[x] NONE	
24. <u>Boats, motors, and accessories.</u>	[x] NONE	

In re: Martha Jean Barigian

/ Debtor

Case No.

**SCHEDULE B - PERSONAL PROPERTY**  
 (Continuation Sheet)

Description of Property	Location	H      Market Value W      of Debtor's J      Interest C      Before Claim
25. <u>Aircraft and accessories.</u> [x] NONE		
26. <u>Office equipment, furnishings, and supplies.</u> 3 Desks Files & Safe		\$ 1,000
27. <u>Machinery, fixtures, equipment, and supplies used in business.</u> [x] NONE		
28. <u>Inventory.</u> [x] NONE		
29. <u>Animals.</u> [x] NONE		
30. <u>Crops - growing or harvested.</u> [x] NONE		
31. <u>Farming equipment and implements.</u> [x] NONE		
32. <u>Farm supplies, chemicals, and feed.</u> [x] NONE		
33. <u>Other personal property of any kind not already listed.</u> [x] NONE		

Total \$ 45,450

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In re: Martha Jean Barigian / Debtor Case No.**SCHEDULE J-CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)**

[ ] Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse".

Rent or home mortgage payment (include lot rented for mobile home)	\$ 450.00
Are real estate taxes included? Yes <u>      </u> No <u>x</u>	
Is property insurance included? Yes <u>      </u> No <u>x</u>	
Utilities: Electricity and heating fuel	\$ 150.00
Water and sewer	\$ 50.00
Telephone	\$ 150.00
Other	\$ 0.00
Home maintenance (repairs and upkeep)	\$ 50.00
Food	\$ 350.00
Clothing	\$ 50.00
Laundry and Dry cleaning	\$ 15.00
Medical and Dental expenses	\$ 50.00
Transportation (not including car payments)	\$ 150.00
Recreation, clubs, and entertainment, newspaper, magazines, etc.	\$ 100.00
Charitable contributions	\$ 0.00
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	\$ 0.00
Life	\$ 0.00
Health	\$ 0.00
Auto	\$ 0.00
Other	\$ 0.00
Taxes (not deducted from wages or included in home mortgages)	\$ 0.00
Installment payments:	
Auto	\$ 0.00
Other	\$ 0.00
Alimony, maintenance, and support paid to others	\$ 0.00
Payments for support of additional dependents not living at your home	\$ 0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ 54,800.00
Other	\$ 0.00
<b>TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)</b>	<b>\$ 56,365.00</b>

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In re: **BARIGIAN, MARTHA JEAN**

Debtor

Case No. (if known)

**SCHEDULE A - REAL PROPERTY**

Description and location of property	Current market value of debtor interest in the property without deducting any secured claim or exemption
Nature of debtor's interest in property	Amount of secured claim

**None**

6

**Total:** **0.00**

In re: **BARIGIAN, MARTHA JEAN**

**Debtors**

**Case No. (if known)**

**SCHEDULE B - PERSONAL PROPERTY**

Type of property	Current market value of debtor's interest in property without deducting any secured claim or exemption
Description and location of property	

1. Cash on hand.  
None
  2. Checking, savings, or other financial accounts, certificates of deposits, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.  
None
  3. Security deposits with public utilities, telephone companies, landlords, and others.  
None
  4. Household goods and furnishings, including audio, video, and computer equipment.  

<b>ASSORTED USED FURNITURE</b>	<b>Debtor interest:</b>	<b>1,500.00</b>
Owner: Debtor		
Location: In debtor possession.		
  5. Books, pictures, and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.  

<b>ASSORTED USED QUILTS</b>	<b>Debtor interest:</b>	<b>1,500.00</b>
Owner: Debtor		
Location: In debtor possession.		
  6. Wearing apparel.  

<b>ASSORTED USED CLOTHING</b>	<b>Debtor interest:</b>	<b>500.00</b>
Owner: Debtor		
Location: In debtor possession.		
  7. Furs and jewelry.  
None
  8. Firearms and sports, photographic, and other hobby equipment.  
None
  9. Interests in insurance policies.  
None
  10. Annuities.  
None
  11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans.  
None
  12. Stock and interests in incorporated and unincorporated businesses.  
None

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In re: **BARIGIAN, MARTHA JEAN**

Debtor

Case No. (if known)

- 13. Interests in partnerships or joint ventures.**  
None
- 14. Government and corporate bonds and other negotiable and non-negotiable instruments.**  
None
- 15. Accounts receivable.**  
None
- 16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled.**  
None
- 17. Other liquidated debts owing debtor including tax refunds.**  
None
- 18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.**  
None
- 19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.**  
None
- 20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims.**  
None
- 21. Patents, copyrights, and other intellectual property.**  
None
- 22. Licenses, franchises, and other general intangibles.**  
None
- 23. Automobiles, trucks, trailers, and other vehicles or accessories.**  
None
- 24. Boats, motors, and accessories.**  
None
- 25. Aircraft and accessories.**  
None
- 26. Office equipment, furnishings, and supplies.**  
None
- 27. Machinery, fixtures, equipment, and supplies used in business.**  
None
- 28. Inventory.**

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In re: **BARIGIAN, MARTHA JEAN**

Debtor

Case No. (if known)

**None**

**29. Animals.**

**None**

**30. Crops - growing or harvested.**

**None**

**31. Farming equipment and implements.**

**None**

**32. Farm supplies, chemicals, and feed.**

**None**

**33. Other personal property of any kind not already listed.**

**None**

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**Total:** **3,500.00**

**Page 3**

In re: **BARIGIAN, MARTHA JEAN**

Debtor

Case No. (if known)

**SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTORS**

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete and label a separate schedule of expenditures.

Rent or home mortgage payment (include lot rented for mobile home) .....	<b>500.00</b>
Are real estate taxes included? Yes _____ No <input checked="" type="checkbox"/>	
Is property insurance included? Yes _____ No <input checked="" type="checkbox"/>	
Utilities: Electricity and heating fuel .....	25.00
Water and sewer .....	125.00
Telephone .....	200.00
Garbage .....	0.00
Security .....	0.00
Cable .....	14.00
Home Maintenance (repairs and upkeep) .....	0.00
Food .....	400.00
Clothing .....	50.00
Laundry and dry cleaning .....	0.00
Medical and dental expenses .....	0.00
Transportation (not including car payments) .....	120.00
Recreation, clubs and entertainment, newspapers, magazines, etc. ....	100.00
Charitable contributions .....	0.00
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's .....	0.00
Life .....	0.00
Health .....	0.00
Auto .....	0.00
Taxes (not deducted from wages or included in home mortgage payments) (specify) .....	0.00
Installment payments (In chapter 12 & 13 cases, do not list payments to be included in the plan) .....	0.00
Alimony, maintenance, and support paid to others .....	0.00
Payments for support of additional dependents not living at your home .....	0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement) .....	0.00
<b>MISC. HYGENE</b> .....	<b>100.00</b>
<b>TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules) .....</b>	<b>1,634.00</b>

(The penalty for making a false statement or concealing property is a fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. secs. 152 and 3571.)

**DECLARATION**

I, **MARTHA JEAN BARIGIAN**, named as debtor in this case, declare under penalty of perjury that I have read the foregoing *Summary and Schedules*, consisting of 21 sheets (including this declaration), and that it is true and correct to the best of my information and belief.

Signature: Martha Jean Barigan  
**MARTHA JEAN BARIGIAN**  
Date: March 22, 1994

In re: BARTIGIAN, MARTHA JEAN

Debtor

SV 94-14622 GM

Case No. (if known)

**SCHEDULE A - REAL PROPERTY**

Description and location of property	Current market value of debtor interest in the property without deducting any secured claim or exemption
Nature of debtor's interest in property	Amount of secured claim

None

Total: 0.00

||

SV 94-14622 GM

In re: BARTIGIAN, MARTHA JEAN

Debtor

Case No. (if known)

**SCHEDULE B - PERSONAL PROPERTY**

Type of property	Current market value of debtor's interest in property without deducting any secured claim or exemption
Description and location of property	

1. Cash on hand.  
None
2. Checking, savings, or other financial accounts, certificates of deposits, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.  
None
3. Security deposits with public utilities, telephone companies, landlords, and others.  
None
4. Household goods and furnishings, including audio, video, and computer equipment.  
**ASSORTED USED FURNITURE** Debtor interest: 1,500.00  
Owner: Debtor  
Location: In debtor possession.
5. Books, pictures, and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.  
**ASSORTED USED QUILTS** Debtor interest: 1,500.00  
Owner: Debtor  
Location: In debtor possession.
6. Wearing apparel.  
**ASSORTED USED CLOTHING** Debtor interest: 500.00  
Owner: Debtor  
Location: In debtor possession.
7. Fur and jewelry.  
None
8. Firearms and sports, photographic, and other hobby equipment.  
None
9. Interests in insurance policies.  
None
10. Annuities.  
None
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans.  
None
12. Stock and interests in incorporated and unincorporated businesses.  
None

12

In re: BARTIGIAN, MARTHA JEAN

Debtor

SV 94-14622 GM

Case No. (if known)

**13. Interests in partnerships or joint ventures.**

None

**14. Government and corporate bonds and other negotiable and non-negotiable instruments.**

None

**15. Accounts receivable.**

None

**16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled.**

None

**17. Other liquidated debts owing debtor including tax refunds.**

None

**18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.**

None

**19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.**

None

**20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims.**

None

**21. Patents, copyrights, and other intellectual property.**

None

**22. Licensees, franchisees, and other general intangibles.**

None

**23. Automobiles, trucks, trailers, and other vehicles or accessories.**

None

**24. Boats, motors, and accessories.**

None

**25. Aircraft and accessories.**

None

**26. Office equipment, furnishings, and supplies.**

None

**27. Machinery, fixtures, equipment, and supplies used in business.**

None

**28. Inventory.**

13

Page 2

In re: BARIGIAN, MARTHA JEAN

Debtors

SV 94-14622 GM

Case No. (if known)

None

**29. Animals.**

None

**30. Crops - growing or harvested.**

None

**31. Farming equipment and implements.**

None

**32. Farm supplies, chemicals, and feed.**

None

**33. Other personal property of any kind not already listed.**

None

14  
Total: 3,500.00

Page 3

In re: BARIGIAN, MARTHA JEAN

Debtor

SV 94-14622 GM

Case No. (if known)

**SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTORS**

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete and label a separate schedule of expenditures.

Rent or home mortgage payment (include lot rented for mobile home) .....	500.00
Are real estate taxes included? Yes <u>      </u> No <u>✓</u>	
Is property insurance included? Yes <u>      </u> No <u>✓</u>	
Utilities: Electricity and heating fuel .....	25.00
Water and sewer .....	125.00
Telephone .....	200.00
Garbage .....	0.00
Security .....	0.00
Cable .....	14.00
Home Maintenance (repairs and upkeep) .....	0.00
Food .....	400.00
Clothing .....	50.00
Laundry and dry cleaning .....	0.00
Medical and dental expenses .....	0.00
Transportation (not including car payments) .....	120.00
Recreation, clubs and entertainment, newspapers, magazines, etc. ....	200.00
Charitable contributions .....	0.00
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's .....	0.00
Life .....	0.00
Health .....	0.00
Auto .....	0.00
Taxes (not deducted from wages or included in home mortgage payments) (specify) .....	0.00
Installment payments (in chapter 12 & 13 cases, do not list payments to be included in the plan) .....	0.00
Alimony, maintenance, and support paid to others .....	0.00
Payments for support of additional dependents not living at your home .....	0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement) .....	0.00
MISC. HYGIENE .....	100.00
<b>TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules) .....</b>	<b>1,634.00</b>

(The penalty for making a false statement or concealing property is a fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. secs. 152 and 3571.)

**DECLARATION**

I, MARTHA JEAN BARIGIAN, named as debtor in this case, declare under penalty of perjury that I have read the foregoing Summary and Schedules, consisting of 22 sheets (including this declaration), and that it is true and correct to the best of my information and belief.

Signature: MARTHA JEAN BARIGIAN

Date: \_\_\_\_\_

(5)